

REMARKS

With this Response, no claims are amended, added, or canceled. Therefore, claims 1-20 are pending.

REJECTIONS UNDER 35 U.S.C. § 101

Claims 14-19 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. More particularly, these claims were rejected as "recit[ing] elements that can be implemented in software alone and are therefore rejected as software, per se. See MPEP 2106.01. It appears that the claims do not include hardware necessary to realize the functionality of the software." Applicants traverse.

Per MPEP § 2106(IV), to determine whether an invention complies with 35 U.S.C. § 101, USPTO personnel are required to: A. Consider the breadth of 35 U.S.C. § 101 under controlling law; B. Determine whether the claimed invention falls within an enumerated statutory category; C. Determine whether the claimed invention falls within judicial exceptions; and D. Establish a prima facie case on the record. The requirements of Section A regarding the breadth of 35 U.S.C. § 101 has general applicability that is best discussed in conjunction with the other sections.

Regarding Section B, determining whether the invention falls within an enumerated statutory category, Applicants' independent include claim 14 is directed to "an article of manufacture" (a manufacture). Applicants' claim is not directed to software per se. Note that the claim is directed to an article of manufacture that includes program code, which article having program code is something made by man; the claim is not directed to software itself. MPEP § 2106(IV)(A) states: "a complete definition of the scope of 35 U.S.C. 101, reflecting Congressional intent, is that **any new and useful** process, machine, **manufacture** or composition of matter **under the sun that is made by man is the proper subject matter of a patent.**" Emphasis added. Applicants submit that claim 14 is within the scope of 35 U.S.C. § 101, as being directed to the **enumerated category** of a manufacture. Thus, the claims are directed to an enumerated category of thing "under the sun that is made by man," which is "the proper subject matter of a patent."

The remaining analysis is only necessary where the claims do not fall within an enumerated category, which is not the case here. Thus, the analysis of compliance with 35 U.S.C. § 101 should end here with a favorable result for Applicants.

REJECTIONS UNDER 35 U.S.C. § 102

Claims 1, 8, 12, 14, 18 and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,061,721 of Ismael et al. (hereinafter "Ismael"). Applicants respectfully submit that these claims are not anticipated by the cited reference for at least the following reasons.

Claim 1 recites the following:

a cluster of application servers communicatively coupled on a network to serve applications over the network to a plurality of clients, each of the application servers comprising **a plurality of server nodes**;
a plurality of **MBean servers** assigned to the plurality of server nodes;
a plurality of **runtime MBeans** associated with specified resources on each of the plurality of server nodes and **registered with one of the MBean servers**, each of the runtime MBeans collecting and reporting monitoring data for its associated resource; and
cluster integration logic to compile resource data collected from each of the individual runtime MBeans via the MBean servers and to provide the compiled data in a predefined organizational structure to a management interface.

Claims 8, 14, and 20 similarly recite limitations directed to a cluster of application servers and a plurality of server nodes. These claims also include limitations directed to MBean servers and runtime MBeans registered with one of the MBean servers.

By way of example and not limitation, Applicants submit that a brief overview of the claimed invention may be useful. Note that the following explanation provides an example of support in the Specification for the claimed subject matter, which should be understood as an example, but not as an exclusive explanation or in any way limiting on the claims.

Consider Figure 8a of Applicants' disclosure, as well as the accompanying text at pars. [0055] to [0058]. Additionally, consider Figure 2 and the accompanying disclosure at pars. [0028] to [0030]. Per the figures and description, there are application servers with a plurality of server nodes, MBean servers assigned to the server nodes, and runtime MBeans associated with resources on the server nodes. There can be a hierarchical relationship between the resources and the MBeans. Such concepts are likewise recited in Applicants' claims. Furthermore, note specifically that "application server" is a technological term that would be understood by those skilled in the art to have a particular meaning. The expression "cluster" is set forth in Applicants' Description, which gives the term "cluster of application servers" a particular meaning that

would be understood by one skilled in the art. Thus, the broadest reasonable interpretation of the claims in light of the Specification must consider the meaning that would be given to the expression "cluster of application servers."

Applicants respectfully submit that Ismael is ineffective in rejecting Applicants' claims at least for failure to disclose or suggest a cluster of application servers as recited in Applicants' claims. Besides reciting a cluster of application servers, Applicants' claims recite each of the application servers having a plurality of server nodes, which is likewise not disclosed or suggested in Ismael.

The cited reference discloses Figure 1 having "three stations connected via a telecommunications network." Col. 3, lines 37 to 38. Applicants submit that one skilled in the art would understand that a "station" is not a server. Rather, the stations represented in Ismael are network management stations, which apparently provide the capability to interface with a managed network. See col. 4, lines 20 to 48. Without needing to precisely characterize the capabilities of the management stations of Ismael, Applicants submit that the management stations of Ismael are not application servers, nor are they a plurality of server nodes of an application server. Whatever interpretation is being given to the management stations of Ismael in the Office Action, it is not consistent with the broadest reasonable interpretation that would be given the term "application server" by one of skill in the art. Without even the need to consider the term "cluster," a group of management stations cannot be a group of application servers, and much less a cluster of application servers, in contrast to what is recited in Applicants' claims. Furthermore, the interpretation given to the management stations is not consistent with the interpretation that would be given by one of skill in the art to a plurality of server nodes of an application server.

Thus, Applicants are unsure whether the management stations are intended in the Office Action to show the application servers or the server nodes. Applicants submit that Ismael's management stations show neither application servers nor server nodes, and certainly do not disclose both.

Furthermore, although the above argument is sufficient to show the deficiencies of the cited reference, Applicants further submit that the Office Action cites the MBeans of Ismael as disclosing the MBeans recited in Applicants' claims. It is not clear from the Office Action whether Ismael's MBeans are intended to disclose the claimed "MBean servers" or the "runtime

MBeans" or both. However, Applicants note that the two terms have distinct meanings and would be understood by one of skill in the art to have a distinction. Thus, a proper rejection of the claims would not simply recite a reference that mentions MBeans, but would also provide technical reasoning to explain how the MBeans in the reference was purported to disclose or suggest not only the runtime beans (which appears to be the meaning of the beans in the Ismael reference, but Applicants do not concede such), but also the MBean servers. Such technical reasoning is absent from the Office Action. Applicants note that per MPEP § 706 and 37 CFR 1.104(c)(2), "In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, ***must be clearly explained*** and each rejected claim specified." Applicants respectfully submit that the rejection of the claims is defective at least because the particular parts of the complex disclosure of the cited reference is not clearly explained as disclosing specific sections of Applicants' claims. Applicants further submit that no interpretation of the cited reference would disclose or suggest the MBean servers and runtime MBeans recited in Applicants' claims.

For at least the foregoing reasons, Applicants submit that the cited reference fails to disclose or inherently suggest at least one feature of the invention as recited in the independent claims, and so fails to support an anticipation rejection of the claims. See MPEP § 2131. The remaining claims are dependent from the independent claims, and necessarily include the limitations of the claims from which they depend. Therefore, the rejection of the dependent claims is defective for at least the same reasons set forth for the independent claims.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 2-7, 9-11, 13, 15-17 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ismael as applied to claims 1, 8, 14 and 20 above, and further in view of U.S. Patent Application No. 2002/0029298 of Wilson (hereinafter "Wilson"). Applicants respectfully submit that these claims are not rendered obvious by the cited references for at least the following reasons.

First of all, the rejection of these claims is based upon the rejection of the independent claims, shown above to be defective. Thus, whether or not the Wilson reference discloses what is

asserted in the Office Action (which Applicants submit it does not), the Wilson reference must cure the deficiencies of the Ismael reference to provide a proper basis for rejection of Applicants' claims. The reference is not cited as curing the deficiencies of Ismael, and indeed fails to cure the deficiencies of Ismael. Applicants note that Wilson discusses managed systems, and refers to managed objects. However, Applicants submit that Wilson, like Ismael, fails to disclose or suggest at least application servers or a plurality of server nodes of an application server. Furthermore, Wilson is cited as disclosing a monitor tree with hierarchical relationships shown. Applicants submit that whether or not the reference discloses a monitor tree (which Applicants do not concede), the reference fails to disclose or suggest hierarchical relationships between resources. The management "hierarchy" of Wilson fails to suggest hierarchical relationships between resources, and the mere mention of resources being different fails to suggest a hierarchy between the resources. See par. [0059]. Thus, the Wilson reference fails to support what is asserted in the Office Action, and fails to cure the deficiencies of the Ismael reference.

Whether alone or in combination, the references fail to disclose or suggest at least one feature of the invention as recited in the independent claims, and so fail to support an obviousness rejection of the independent claims. See MPEP § 2143. When an independent claim is nonobvious over the cited references, the dependent claims are necessarily nonobvious over the cited references, per MPEP § 2143.03. Therefore, Applicants respectfully request that the rejection of the claims be withdrawn.

CONCLUSION

For at least the foregoing reasons, Applicants submit that the rejections have been overcome. Therefore, all pending claims are in condition for allowance, and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application.

Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Date: September 21, 2007

/Vincent H. Anderson/
Vincent H. Anderson
Reg. No. 54,962
Attorney for Applicant

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(503) 439-8778